

BEFORE THE STATE AUDITOR  
AND COMMISSIONER OF INSURANCE  
HELENA, MONTANA

IN THE MATTER OF:

Case No. 2001-7

THE PROPOSED DISCIPLINARY  
TREATMENT OF JERRY MCRAE

CONSENT AGREEMENT

Respondent.

The Montana Insurance Commissioner [Commissioner], and the Respondent, Jerry McRae, enter into this consent agreement to resolve the proposed disciplinary treatment, as follows:

1. The Respondent acknowledges receipt of the Notice of Proposed Agency Action and Opportunity for Hearing in this matter.

2. The Respondent acknowledges that he has had an opportunity to consult with counsel, and also an opportunity to contest the Notice of Proposed Agency Action and Opportunity for Hearing, as provided in the Insurance Code of Montana and the Montana Administrative Procedures Act.

3. In its notice, the Department of Insurance alleges that the Respondent procured either property or risk insurance coverage for controlled businesses in violation of § 33-17-102(7), MCA.

4. Without either admitting or denying the allegations in the Notice of Proposed Agency Action, the Respondent agrees to pay a fine in the amount of One Thousand and NO/100 DOLLARS (\$ 1,000.00).

1 The Respondent acknowledges that if this matter were to go to  
2 hearing, it is likely he would be found in violation of procuring  
3 insurance for a controlled business.

4 5. The Respondent agrees to comply with the Insurance Code of  
5 Montana in the conduct of his business. The Respondent also waives  
6 the right to a hearing in this matter by entering into this consent  
7 agreement.

8 6. The Respondent states that he has read the foregoing  
9 consent agreement, that he knows and fully understands its contents  
10 and effect. The Respondent has been advised of his right to be  
11 represented by legal counsel and he is satisfied with the  
12 representation of his counsel. The Respondent has been advised of  
13 their right to a hearing in this matter and has waived the right to  
14 a hearing, and in doing so he has waived their right to present  
15 evidence and arguments to the Commissioner, and also has waived his  
16 right to appeal any adverse determination after hearing. Further,  
17 the Respondent acknowledges that the *Notice of Proposed Agency*  
18 *Action*, as well as the consent agreement, are a matter of public  
19 record.

20 7. It is further understood that this consent agreement  
21 constitutes the entire agreement between the parties, there being  
22 no other promises or agreements, either express or implied.

23 8. Pursuant to the stipulation and consent of the above  
24 above entitled parties, the Commissioner, under authority of the  
25 Insurance Code of Montana, and Section 2-4-603, MCA, hereby agrees  
26 that if the terms and conditions of this Consent Agreement are

fully met, he will not initiate any civil or administrative action  
against the above entitled parties regarding the allegations  
contained in the Notice of Proposed Agency Action filed in this  
matter pursuant to Sections 33-1-317 and 33-17-1001, MCA. In  
consideration for the Commissioner not initiating any civil or  
administrative action, the above entitled parties fully and forever  
release and discharge the Office of the State Auditor, the elected  
State Auditor and all State Auditor employees from any and all  
actions, claims, causes of action, demands, or expenses for damages  
or injuries, whether asserted or unasserted, known or unknown,  
foreseen or unforeseen, arising out of the above entitled  
administrative action.

DATED this 8<sup>th</sup> day of August, 2001.

JOHN MORRISON  
State Auditor and  
Commissioner of Insurance

By: Roberta Cross Guns  
Roberta Cross Guns  
Staff Attorney

RESPONDENT

By: Jerry McRae  
Jerry McRae

Subscribed and Sworn to before me this 8<sup>th</sup> day of August, 2001.

( S E A L )

[Signature]  
Notary Public for the state of Montana  
Residing at Dutton, Montana  
My commission expires 7-11-2004

BEFORE THE STATE AUDITOR  
AND COMMISSIONER OF INSURANCE  
HELENA, MONTANA

---

IN THE MATTER OF:	)	CASE NO. 2001-7
	)	
THE PROPOSED DISCIPLINARY	)	
TREATMENT OF JERRY MCRAE,	)	
	)	
Respondents.	)	

---

NOTICE OF PROPOSED AGENCY ACTION AND OPPORTUNITY FOR HEARING  
(LICENSE DISCIPLINE AND ADMINISTRATIVE FINE) TO:

Mr. Jerry McRae  
1810 19th Lane N.E.  
Dutton, MT 59433

PLEASE TAKE NOTICE

Staff of the Insurance Division of the office of the State Auditor and Commissioner of Insurance of the state of Montana (Commissioner), pursuant to the authority of the Insurance Code of Montana, Section 33-1-101, et seq., Montana Code Annotated (1999) (MCA), is proposing to the Commissioner that he take disciplinary action against the entities named above for violations of the Montana Code. The Commissioner has authority to take such action under the provisions of Sections 33-1-102, 33-1-317, 33-17-406, and 33-17-1001, MCA.

In particular, the staff is recommending action against the insurance producer's license of **JERRY MCRAE** and that appropriate fines be imposed on the entity named above.

Service of process is pursuant to section 33-1-314, MCA.

REASONS FOR ACTION

There is probable cause to believe that the following facts, if true, justify and support such disciplinary treatment.

#### ALLEGATIONS

1. Jerry McRae (hereafter "McRae") is licensed as an insurance producer with Montana, and has been licensed as such since March 1997;
2. McRae indicated on his application for an insurance producer's license that he would not write insurance coverage exclusively to himself or his relatives. Exhibit A.
3. Since first acquiring his license, four years ago, McRae procures either property or risk insurance coverage for his businesses and or his spouse, constituting a controlled business as defined in § 33-17-102 (7), MCA;
4. During each 12-month period since March 1997, McRae's aggregate amount of premiums on controlled business exceeds his aggregate amount of premiums on all his other insurance business;

#### CONCLUSIONS

5. McRae is in violation of § 33-17-201 (6), MCA, by writing controlled business on his license;
6. McRae is in violation of § 33-17-1001 (1) (a), (b), (c), and (g), MCA;

#### RELIEF SOUGHT

7. For violating § 33-17-201 (6), MCA, the agency seeks revocation of McRae's insurance producer's license;
8. For violating § 33-17-1001 (1) (a), (b), (c), and (g), MCA, the agency seeks revocation of McRae's insurance producer's license;
9. For violating §§ 33-17-201 (6), and 33-17-1001 (1) (a), (b), (c), and (g), MCA, the agency seeks imposition of a fine against McRae not to exceed the sum of \$5,000 pursuant to § 33-1-317, MCA.

#### STATEMENT OF RIGHTS

You are entitled to a hearing to respond to this notice, present evidence and arguments on all issues involved in this case. You have a right to be represented by an attorney at any and all stages of this proceeding. You may demand a formal hearing before a hearing examiner appointed by the Commissioner pursuant to the Montana Administrative Procedure Act, sections - 2-4-601, MCA, and following, including Section 2-4-631, MCA. If you demand a hearing, you will be given notice of the time, place and the nature of the hearing. Pursuant to section 33-1-701(2), the hearing shall be held within 30 days after the commissioner receives a demand for hearing, unless postponed by mutual consent.



If you want to contest the proposed action under the jurisdiction of the Commissioner, you must advise the Commissioner within fifteen (15) days of the date you receive this notice. You must advise the Commissioner of your intent to contest the proposed action by writing to Roberta Cross Guns, Insurance Attorney, State Auditor's Office, P.O. Box 4009, Helena, Montana 59604-4009. Your letter to Ms. Cross Guns, must clearly indicate whether you demand a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for disposition of this case. Pursuant to section 2-4-603(2), Mont. Code Ann., you may not request to proceed informally if the action could result in suspension, revocation or any other adverse action against a professional license.

Should you request a hearing, you have the right to be accompanied, represented, and advised by counsel. If the counsel you choose has not been admitted to practice law in the state of Montana, he or she must comply with the requirements of Application of American Smelting and Refining Co., (1973), 164 Mont. 139, 520 P.2d 103.

#### CONTACT WITH INSURANCE COMMISSIONER'S OFFICE

If you have questions or wish to discuss this matter, please contact Roberta Cross Guns, legal counsel for the State Auditor, at P.O. Box 4009, Helena, MT, 59604-4009, (406)-444-5234 or, within Montana, (800)332-6148. If you are represented

by an attorney, please make any contacts with this office through your attorney.

POSSIBILITY OF DEFAULT

Failure to give notice or to advise of your demand for a hearing or form of informal procedure within fifteen (15) days, will result in the entry of a default order imposing the disciplinary sanctions against you and your license, without further notice to you, pursuant to 6.2.101, Administrative Rules of Montana and the Attorney General's Model Rule 10, 1.3.214.

DATED this 16<sup>th</sup> day of March, 2001.

JOHN MORRISON  
State Auditor and  
Commissioner of Insurance

By: Roberta Cross Guns  
Roberta Cross Guns  
Insurance Attorney



CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing NOTICE OF PROPOSED AGENCY ACTION AND OPPORTUNITY FOR HEARING (LICENSE DISCIPLINE AND ADMINISTRATIVE FINE) to the following persons by depositing the same in the U.S. Mail, certified, return receipt requested, on this 16 day of MARCH, 2001.

TO: Mr. Jerry McRae  
1810 19th Lane N.E.  
Dutton, MT 59433

*Darla Sautter*

State Auditor's Office